

REMARKS

Claims 14-29 are pending in this application. Claims 14-29 are rejected. No claims are amended.

Rejection Under 35 U.S.C. § 103(a)

Claims 14-29 are rejected under 35 U.S.C. § 103(a) as unpatentable over Morvan et al (WO 03002242—equivalent US 2004/0170657 referenced herein)(“Morvan”). *See* Office Action at 2.

The present invention is generally directed to dried emulsions comprising a matrix with a liquid hydrophobic phase dispersed therein.

According to the Office Action, Morvan teaches a dispersion of at least one emulsion of an organic phase in an aqueous phase, the aqueous phase having a soluble salt content of at least 0.5 mol/L and comprising a block copolymer comprising at least one hydrophobic and at least one hydrophilic block. *See* Office Action at 2.

Nevertheless, the Office Action acknowledges that the prior art does not teach a dried emulsion having weight ratio of a hydrophobic phase to the matrix of greater than 50/50. *See id.*

According to the Office Action, Morvan teaches copolymer in an amount relative to the organic phase of from 2-20% and that the organic phase may range from 5-50% by weight of the dispersion. *See* Office Action at 3. Therefore, according to the Office Action, “the disclosed weight ratio of the organic (hydrophobic) phase to the block copolymer in the dried emulsion overlaps in scope with the presently recited range of greater than 50/50” and the invention is *prima facie* obvious. *Id.* The Office Action states that, “[i]n view of the generic teaching in the prior art and in view of the case law, it

would have been obvious to one of ordinary skill in the art to utilize any wt. ratio of the organic phase to the copolymer disclosed in the prior art....” *Id.* Applicants respectfully traverse.

Independent claim 14 of the present invention includes the following two recitations:

Recitation (1): “said matrix comprises at least 50% by weight of a water-soluble or water-dispersible polymer,” and

Recitation (2): “the weight ratio of the hydrophobic phase to the matrix is greater than 50/50.”

As noted above, the Office Action acknowledges that Morvan does not teach Recitation (2). Applicants respectfully submit that Morvan also does not teach Recitation (1).

Applicants disagree that any relevant ranges overlap. Morvan teaches in relevant part:

“[0103] The content of copolymer in the dispersion according to the invention represents more particularly at least 1 wt. % relative to the organic phase, advantageously from 2 to 20 wt. % relative to the organic phase, and preferably between 2 and 10 wt. % relative to the organic phase;”

and

“[0143] According to a particular embodiment of the invention, the proportion by weight of organic phase in the dispersion represents 5 to 50 wt. %, preferably 10 to 30 wt. %.”

Neither of these disclosures overlaps with Recitations (1) or (2) above. Recitation (1) relates the amount of polymer in the matrix. Recitation (2) relates to the amount of hydrophobic phase relative to the amount of matrix. In contrast, paragraph [0103] of

Morvan relates to the amount of copolymer compared with the amount of organic phase (hydrophobic phase), and paragraph [0143] of Morvan relates to the amount of organic phase in the dispersion.

Applicants disagree that it would have been obvious to one of ordinary skill in the art to utilize any amount of hydrophobic phase and any amount of copolymer. To arrive at the present invention, one of ordinary skill in the art would have had to modify the dispersion of Morvan to change both the amount of copolymer in the matrix and the ratio of hydrophobic phase to the matrix, requiring more than routine optimization.

Obviously, one of ordinary skill in the art does not modify parameters such as ratios of components in a vacuum, but does so with a particular goal in mind. This presupposes some idea of a result that would be achieved with a given modification. Importantly, not only does Morvan not provide any such nexus, *i.e.*, suggestion, reason, or motivation to modify its teachings, but Morvan actually teaches away from the subject matter of Recitations (1) and (2): In both teachings of Morvan above, Applicants note that the preferred ranges result in less copolymer in the dispersion and less organic phase in the dispersion. Because Morvan does not disclose any reason why one of skill in the art should make multiple modifications to its dispersions, Applicants respectfully submit that one of ordinary skill in the art would not have found it obvious to modify Morvan to arrive at the present invention.

In *In re Kubin*, the Federal Circuit recently reiterated its clarification of two classes of situations where "obvious to try" is erroneously equated with obviousness under § 103:

1) "[W]hat would have been 'obvious to try' would have been to vary all parameters or try each of numerous possible choices until one possibly arrived at

a successful result, where the prior art gave either no indication of which parameters were critical or no direction as to which of many possible choices is likely to be successful. In such circumstances, where a defendant merely throws metaphorical darts at a board filled with combinatorial prior art possibilities, courts should not succumb to hindsight claims of obviousness.”

2) “[W]hat was ‘obvious to try’ was to explore a new technology or general approach that seemed to be a promising field of experimentation, where the prior art gave only general guidance as to the particular form of the claimed invention or how to achieve it.”

In re Kubin, 561 F.3d 1351, 1359 (Fed. Cir. 2009)(*citations omitted*).

With regard to the first situation, Morvan gives no indication which parameters are critical, or which modifications are likely to be successful to achieve a dried as claimed in the instant application. And with regard to the second *Kubin* situation, Morvan “[gives] only general guidance as to the particular form of the claimed invention or how to achieve it.” As discussed above, Morvan provides only general teachings with numerous possible choices and no guidance regarding how to select the particular combination of elements to arrive at the present invention.

For these reasons, Applicants respectfully submit that under current law, the Office Action does not establish a *prima facie* case of obviousness and this rejection should be withdrawn.

CONCLUSION

An indication of allowance of all claims is respectfully solicited. In the event any issues remain, Applicants would appreciate the courtesy of a telephone call to their counsel to resolve such issues and place all claims in condition for allowance.

Respectfully submitted,

Hunton & Williams, L.L.P.

Dated: July 6, 2010

By: 

Robert M. Schulman
Registration No. 31,196

Dwight M. Benner II
Registration No. 52,467

HUNTON & WILLIAMS LLP
Intellectual Property Department
1900 K Street, N.W., Suite 1200
Washington, D.C. 20006-1109
Telephone: (202) 955-1500
Facsimile: (202) 778-2201